

REMARKS

Claims 1-64 are pending in the instant application. Claims 15-54 have been withdrawn under 37 C.F.R. 1.142(b) pursuant to a restriction requirement. Claims 1-14 and 55-59 have been rejected by the Examiner. Claims 1 and 55 have been amended. The Applicant submits that the claims are in condition for allowance and requests reconsideration and withdrawal of the outstanding rejections. No new matter has been entered.

Claim Rejections Under - 35 USC §112

The Examiner objected to the term “generally stationary.” This term has been removed from both independent claims. In its place, the cutting surface has been defined as being “fixed relative to the tip.” Any 35 U.S.C. 112 issues should be obviated thereby.

Claim Rejections Under - 35 USC §102

With regard to the rejections of claims 1-3, 5-8, 10, 12-14, and 55-56 under 35 U.S.C. 102(b) as being anticipated by Sauer '289:

It is noted that a number of features of the claims are evidently lacking from the Sauer '289 reference. With specific regard to independent claim 1 and independent claim 55, the '289 reference fails to describe a cutting edge fixed relative to the tip. Indeed, with regard to Figures 7-9 of the '289 reference, the cutting edge of Sauer '289 clearly slides a significant distance distally to cut the suture following crimping of the ferrule 100 by the hammer 26. Because the cutting edge 30 slides distally within the tip to cut the suture, it is not fixed relative to the tip.

As is well known, in order to anticipate a reference, the cited reference must teach or suggest every limitation of the claims (so called “all elements rule”). Because this limitation is not taught or suggested by the '289 reference, the rejections of claims 1-3, 5-8, 10, 12-14, and 55-56 under 35 U.S.C. 102(b) are improper.

Further with regard to independent claim 1, the cutting blade of Sauer '289 is not located proximally of the ferrule accepting opening, as is required by claim 1. Again, the rejections are improper.

With regard to the rejections of Claims 1-10, 12 and 55-56 under 35 U.S.C. 102(e) as being anticipated by Sauer '592:

Sauer '592 also fails to teach every limitation of independent claims 1 and 55.

Specifically, Sauer '592 fails to teach the cutting edge within the hammer head opening and fixed relative to the tip. Rather, similar to Sauer '289, Sauer '592 teaches a movable cutting blade relative to the tip (thus a movable cutting edge; See Figs 16 B-E in Sauer '592).

Because the Sauer '592 reference does not teach or suggest a cutting edge that is fixed relative to the tip, the rejections of claims 1-10, 12 and 55-56 under 35 U.S.C. 102(e) are improper.

Claim Rejections Under - 35 USC §103

With regard to the rejections of claims 11 and 57 under 35 U.S.C. 103(a) as being unpatentable over Sauer '289 in view of Sauer '639:

The Sauer '639 patent is directed to a collapsible anvil assembly for a stapler, and is presented by the Examiner merely as evidence that "safety buttons" are known as devices that may prevent premature firing of devices. The Sauer '639 patent does not otherwise add, and the Examiner does not assert that the Sauer '639 patent otherwise adds, to the teachings of the '289 patent to approximate claims 1 or 55 or to make up for the deficiencies of the '289 patent with regard to the independent claims. Accordingly, a *prima facie* case of obviousness is not made out for even those independent claims, much less the rejected dependent claims 11 and 57. For this reason, the rejections are improper and should be withdrawn.

CONCLUSION

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance is requested. It is submitted that the foregoing amendments and remarks should render the case in condition for allowance.

Accordingly, as the cited references neither anticipate nor render obvious that which the applicant deems to be the invention, it is respectfully requested that the claims be passed to issue.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

CANTOR COLBURN LLP
Applicants' Attorneys

By: /H. M. Bedingfield/
H. M. Bedingfield
Registration No. 44,530
Customer No. 23413

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Address: 55 Griffin Road South
Bloomfield, CT 06002
Telephone: (860) 286-2929
Fax: (860) 286-0115